

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed January 8, 2007. Through this response, claims 1 and 14 have been amended, claims 13, 20-32, 37-43, and 45-47 have been canceled, and claims 48-55 have been added. Reconsideration and allowance of the application and pending claims 1-12, 14-19, 33-36, 44, and 48-55 are respectfully requested.

### **I. Allowable Subject Matter**

Applicants appreciate the Examiner's indication that claims 13, 20, and 43 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

In the interest of expediting allowance of the claims, Applicants have amended claims 1 and 14 to include the allowed dependent claims, and have added claims 48-55. Claim 48 includes elements of claim 1 and claim 43 and the intervening dependent claims from which claim 43 directly or indirectly depends. Thus, Applicants respectfully submit that pending claims 1-12, 14-19, 33-36, 44, and 48-55 are in a condition for allowance. Applicants reserve their right to pursue claims as pending prior to the present response, or variants thereof, in a continuing application.

### **II. Claim Rejections - 35 U.S.C. § 102(e)**

#### **A. Statement of the Rejection**

Claims 1 – 2, 10 – 12, 14, 17 – 19, 21, 25, 29, 33, 35, 37, 39, 41, 44, and 45 – 47 have been rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by *Goode et al.* ("Goode," U.S. Pat. No. 6,163,272). Although Applicants respectfully disagree, in the interest of expediting allowance of the claims, Applicants have amended claims 1 and 14 and have canceled claims 21, 25, 29, 37, 39, 41, and 45-47, thus rendering the rejection to

these claims moot. Further, Applicants respectfully submit that claims 1 – 2, 10 – 12, 14, 17 – 19, 33, 35, and 44 are allowable over *Goode*.

## B. Discussion of the Rejection

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(e).

### Independent Claim 1

Claim 1 recites (emphasis added):

1. In a cable data delivery network for delivering digital data to a host location upon a subscriber initiated request, an apparatus for authenticating that the subscriber is authorized to use said network, said apparatus comprising:

- a network manager including at least one database of authorized users and authorized unique identifiers for each of a plurality of authorized data communication devices and a validation agent, said validation agent further comprising:

- logic to the subscriber to access a first communications path by comparing first subscriber authentication information received from a data communication device associated with the host location with at least part of the at least one database comprising the authorized users,

- the first communications path providing at least a portion of connectivity between the host location and a head end of the cable data delivery network; and

- logic to authorize the subscriber to access a second communications path, responsive to the first communications path authorization, by comparing a unique identifier of the data communication device that is received from the data communication device with at least part of the at least one database comprising the authorized unique identifiers for each of the plurality of data communication devices,

- the second communications path providing at least a portion of connectivity between the host location and the head end of the cable data delivery network ***wherein the second communications path is uni-directional.***

Applicants respectfully submit that the rejection to claim 1 has been rendered moot. Additionally, Applicants respectfully submit that *Goode* fails to disclose, teach, or suggest at least the above-emphasized claim features.

The Office Action states (page 9):

Claims 13, 20 and 43 are objected to as to being dependent upon rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. [sic]

Applicants have amended independent claim 1 to include the elements of claim 13. Namely, the feature of “wherein the second communications path is uni-directional” has been added through amendment. Thus, for at least the reason that claim 1 includes allowable dependent claim 13, Applicants respectfully submit that the rejection of claim 1 should be withdrawn.

Because independent claim 1 is allowable over *Goode*, dependent claims 2, 10 – 12, and 33 are allowable as a matter of law for at least the reason that the dependent claims 2, 10 – 12, and 33 contain all elements of their respective base claim.

#### **Independent Claim 14**

Claim 14 recites (emphasis added):

14. A method of authorizing a subscriber to access a first communications path and a second communications path, the first communications path and the second communications path utilized in conveying data between a head end of a cable data delivery network and a data communication device associated with the subscriber of the cable data delivery network, the method comprising the steps of:

authorizing the subscriber to access the first communications path by comparing first subscriber authentication information received from the data communication device with at least part of at least one database of authorized users, the first communications path providing at least a portion of connectivity between the data communication device and the head end of the cable data delivery network; and

authorizing the subscriber to access the second communications path, responsive to the first

communications path authorization, by a unique identifier of the data communication device that is received from the data communication device, with at least part of the at least one database that further includes authorized unique identifiers for each of a plurality of authorized data communication devices, the second communications path providing at least a portion of connectivity between the data communication device and the head end of the cable data delivery network **wherein the second communications path is uni-directional.**

Applicants respectfully submit that the rejection to claim 14 has been rendered moot. Additionally, Applicants respectfully submit that *Goode* fails to disclose, teach, or suggest at least the above-emphasized claim features. Applicants have amended independent claim 14 to include dependent claim 20. Namely, the feature of “wherein the second communications path is uni-directional” has been added through amendment. Thus, for at least the reason that claim 14 includes allowable dependent claim 20, Applicants respectfully submit that the rejection of claim 14 should be withdrawn.

Because independent claim 14 is allowable over *Goode*, dependent claims 17 – 19, 35, and 44 are allowable as a matter of law.

### **III. Claim Rejections - 35 U.S.C. § 103(a)**

#### **A. Rejection of Claims 3 – 9, 15 – 16, 22 – 24, 26 – 28, 30 – 32, 34, 36, 38, 40, and 42**

Claims 3 – 9, 15 – 16, 34, 36, 38, 40, and 42 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Goode* in view of *Bryer et al.* (“*Bryer*”, U.S. Patent No. 4,780,757). Claims 22 – 24, 26 – 28, and 30 – 32 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Goode*. Applicants have canceled claims 22 – 24, 26 – 28, 30 – 32, 38, 40, and 42, thus rendering the rejection to those canceled claims moot.

**B. Discussion of the Rejection**

The U.S. Patent and Trademark Office (“USPTO”) has the burden under section 103 to establish a *prima facie* case of obviousness according to the factual inquiries expressed in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). The four factual inquiries, also expressed in MPEP 2100-116, are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

Applicants respectfully submit that a *prima facie* case of obviousness is not established using the art of record.

**Dependent Claims 3 – 9, 15 – 16, 34, 36, 38, 40, and 42**

Applicants respectfully submit that as provided above, independent claims 1 and 14 are allowable over *Goode*. Applicants respectfully submit that *Bryer* does not remedy the above-described deficiencies of *Goode*. Thus, for at least the reason that dependent claims 3 – 9, 15 – 16, 34, 36, 38, 40, and 42 incorporate the features of respective allowable claims 1 and 14, dependent claims 3 – 9, 15 – 16, 34, 36, 38, 40, and 42 are allowable as a matter of law.

**Dependent Claims 22 – 24, 26 – 28, and 30 – 32**

Although Applicants respectfully disagree that *Goode* in combination with Official Notice discloses, teaches, or suggests, all of the features of claims 22 – 24, 26 – 28, and 30 – 32, in the interest of expediting allowance of the claims, Applicants have canceled claims 22 – 24, 26 – 28, and 30 – 32, rendering the rejection of claims 22 – 24, 26 – 28, and 30 – 32 moot. Applicants reserve the right to pursue these claims, or variants thereof, in a continuing application.

#### IV. Official Notice

The Office Action has made the following allegations of Official Notice:

(Page 9, pertaining to claim 22) “The examiner takes Official Notice to the fact that a cable television headend can control the rate of transmission between multiple levels of service.”

(Page 9, pertaining to claim 23) “Claim 23 corresponds to claim 22...”

(Page 9, pertaining to claim 24) “Claim 24 corresponds to claim 22...”

(Page 9, pertaining to claims 26-28) “Referring to claims 26-28, see the rejection of claims 22-24, respectively.”

(Page 9, pertaining to claims 30-32) “Referring to claims 30-32, see the rejection of claims 22-24, respectively.”

Applicants respectfully submit that the cancellation of claims 22-32 renders the rejection and Official Notice moot. Additionally, for the record, Applicants respectfully traverse these allegations of Official Notice and submit that the subject matter pertaining to these claims should not be considered well-known. As provided in MPEP § 2144.03:

Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424, F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of such instant and unquestionable demonstration as to defy dispute” (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

As provided in MPEP § 2144.03 (emphasis added):

If applicant adequately traverses the examiner’s assertion of official notice, *the examiner must provide documentary evidence in the next Office action* if the rejection is to be maintained. See 37 CFR 1.104(c)(2).

Applicants respectfully submit that in the context of the claim language, such a finding of well known art is improper at least given the added complexity associated with such features as described in previously pending claims 21 - 32.

Accordingly, Applicants traverse the assertions with regard to Official Notice. Because of this traversal, the Office must support its findings with evidence, or withdraw the Official Notice determination.

**V. Canceled Claims**

As identified above, claims 13, 20-32, 37-43, and 45-47 have been canceled from the application through this Response without prejudice, waiver, or disclaimer. Applicants reserve the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

**VI. New Claims**

As identified above, claims 48-55 have been added into the application through this Response. Claim 48 incorporates claim 1 and the allowable feature of claim 43 and its intervening claims. Applicants respectfully submit that these new claims describe an embodiment that is hence novel and unobvious in view of the art of record and, therefore, respectfully request that these claims be held to be allowable.

**CONCLUSION**

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

/dr/

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